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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte IRA R. FORMAN, LANE THOMAS HOLLOWAY,
NADEEM MALIK, and MARQUES BENJAMIN QUILLER

Appeal 2009-005751
Application 10/675,675
Technology Center 3600

Decided: December 18, 2009

Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants seek our review under 35 U.S.C. § 134 of the final rejections of claims 1-5, 8-12, and 21-25. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.[1]

THE INVENTION

Appellants' claimed invention relates to a method, system and program for distributed computing which enables a computer power service broker operating over the Web to distribute and track such distribution of computer power. (Spec. p. 3, ll. 5-9).

Independent claim 8, which is deemed to be representative, reads as follows:

> 8. In distributed computing via the World Wide Web (Web) connections, a method for tracking distributed computer power to users and compensating computer power providers comprising:
>
> soliciting, through a computer power service broker, each of a plurality of client computer stations on the Web to offer for general distribution over the Web computer power in excess to the computer power requirements of each client respective computer station;
>
> soliciting, through a computer power service broker, a plurality of consumer stations on the Web to

[1] Our decision will make reference to the Appellants' Supplemental Appeal Brief ("Br.," filed Feb. 8, 2008) and Reply Brief ("Reply Br.," filed Jun. 16, 2008), and the Examiner's Answer ("Ans.," mailed Apr. 14, 2008).

request performance of functions requiring computer power;

distributing, through said broker, each of said requested functions requiring computer power among a plurality of said client computer stations offering said computer power;

permitting, by each of said client computer stations, said computer power service broker to access, via the Web, the computer power of said client computer station;

distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station;

tracking and for billing, through said broker, consumer stations for computer power used in performance of requested functions; and

tracking and compensating, through said broker, said client computer stations for said excess computer power used in performance of said requested functions.

THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

McKnight et al.	2002/0165819 A1	Nov. 7, 2002
Shuster	2003/0009533 A1	Jan. 9, 2003
Burnett	2004/0093295 A1	May 13, 2004

The Examiner rejected claims 1, 8, and 21 under 35 U.S.C. § 102(e) as being anticipated by McKnight. Additionally, the Examiner rejected claims 2-3, 5, 9-10, 12, 22-23, and 25 under 35 U.S.C. § 103(a) as being unpatentable over McKnight and Burnett. Lastly, the Examiner rejected claims 4, 11, and 24 under 35 U.S.C. § 103(a) as being unpatentable over McKnight, Burnett, and Shuster.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

Have Appellants shown the Examiner erred in finding that McKnight discloses the limitation ". . . distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station," as recited in claims 1, 8, and 21?

Have Appellants shown the Examiner erred in finding that KcKnight, taken with Burrnett and/or Shuster, rendered the subject matter of claims 2-5, 9-12, and 22-25 obvious?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (explaining the general evidentiary standard for proceedings before the Office).

Claim Interpretation

1. Appellants have not provided a lexicographic definition of the term "process" in their disclosure.

2. The ordinary and customary meaning of a "process" is "[t]o perform operations on data."[2]

3. Appellants' Specification describes ". . . a relatively simple program routine that detects when the computer station 63 through 66 is idle 10 and notifies a management server, e.g. server 62." (p. 10, ll. 8-10).

McKnight

4. McKnight is directed to a method for providing distributed computing services via a network. (Abs.).

5. McKnight describes a system and method for providing distributed computing services via a network wherein a service provider leases computing resources on information handling systems to be purchased by customers. (¶ [0005]).

6. McKnight discloses, ". . . hosts 102 (and user/hosts 104) enter agreements or contracts with the organization providing the distributed computing system 100 for furnishing computing resources for use by users 106 (and other user/hosts 104). (¶ [0017]).

7. McKnight discloses, "[a] system manager 110 integrates, organizes and manages the computing resources furnished by hosts 102 and user hosts

[2] *Webster's II Dictionary* (3rd ed. 2005) – definition of process as applicable to computer science.

104 and the provision of distributed computing services to users 106 and other user/hosts 104." (¶ [0016]).

8. Appellants agree that McKnight generally discloses, ". . . a variety of computer power distribution functions including soliciting power from client stations, distributing such power to a set of consumers, tracking consumer usage, and carrying out appropriate collection and payment to client stations." (Br. 10-11).

Burnett

9. Burnett is directed to a system and method for providing distributive computing resources in a retail environment. (Abs.).

Shuster

10. Shuster is directed to a method for operating a host layer of a distributed computing system on a wide area network includes attaching an autonomous agent to a client-requested carrier, such as web content. (Abs.).

PRINCIPLES OF LAW

We determine the scope of the claims in patent applications "not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction 'in light of the specification as it would be interpreted by one of ordinary skill in the art.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (*quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)). We must be careful not to read a particular embodiment appearing in the written description into the

claim if the claim language is broader than the embodiment. *See Superguide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment"). The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Center*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). When the specification states the meaning that a term in the claim is intended to have, the claim is "examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art." *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

Claims 1, 8, and 21 rejected under 35 U.S.C. § 102(e) as being anticipated by McKnight.

Appellants agree that McKnight generally discloses the limitations recited in claim 8 (Br. 10, *see also* FF 8), but argue that McKnight does not disclose the limitation, "…distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station," as recited in claim 8. (Reply Br. 3). Independent claims 1 and 21 recite similar limitations. Additionally, Appellants argue with regard to the same limitation, that a "process" as claimed should be interpreted as a "simple program" as described in the Specification. (App. Br. 10, *see also* FF 3).

Turning first to Appellants' argument that a "process" as recited in claims 1, 8, and 21, should be interpreted as a "simple program," we disagree. Appellants argue that a "process" is "a relatively simple program routine" that detects when the computer station is idle and notifies a management server. (FF 3). We find that Appellants are arguing unclaimed limitations, and thus not commensurate with the broader scope of the independent claims which merely recite distributing a "process" without further limiting the scope of the process. (FF 2, 3). Further, we agree with the Examiner, that under the broadest reasonable interpretation, " . . .distributing a process enabling the broker to access the computer power of a client station [as claimed by Appellants,] can refer to any process that accesses computer power." (Ans. 14, *see also* FF 1, 2). Thus, we need not read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *Superguide Corp.* 358 F.3d at 875. Therefore, we find the Examiner's interpretation of a "process" as "any process that accesses computer power," to be a

reasonable interpretation since the claim language is broader than the specified embodiments of the specification. Therefore, Appellants' arguments are not persuasive as to the error in the rejection.

Next, turning to Appellants argument that McKnight fails to disclose, ". . . distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station," we disagree. McKnight discloses a system and method for providing distributed computing where the system manager, which we interpret to be the broker, accesses via the internet, the available computing resources of each of the hosts, which we interpret to be the computer power of the client stations. Subsequently, the system manager (i.e., broker) is able to distribute the process of accessing the computing resources from each of the client stations. (FF 5, 6, 7). Thus, consistent with the broadest reasonable interpretation of a "process," as discussed *supra*, McKnight discloses the limitation, "…distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station," as recited by claims 1, 8, and 21. Accordingly, Appellants' arguments are not persuasive as to the error in the rejection.

With regard to the means-plus-function limitations of independent claim 1, Appellants' have not distinguished this claim with any structure that would change the analysis as applied to claims 1 and 21, *supra*. Therefore, we find no basis to examine these claims under 35 U.S.C. § 112, sixth paragraph.

Claims 2-3, 5, 9-10, 12, 22-23, and 25 rejected under 35 U.S.C. § 103(a) as being unpatentable over McKnight and Burnett.

Appellants do not separately argue claims 2-3, 5, 9-10, 12, 22-23, and 25, which depend from claims 1, 8, and 21 respectively, and so have not sustained their burden of showing that the Examiner erred in rejecting claims 2-3, 5, 9-10, 12, 22-23, and 25 under 35 U.S.C. § 103(a) as unpatentable over McKnight and Burnett for the same reasons we found as to claims 1, 8, and 21, *supra*.

Claims 4, 11, and 24 rejected under 35 U.S.C. § 103(a) as being unpatentable over by McKnight, Burnett, and Shuster.

Appellants do not separately argue claims 4, 11, and 24, which depend from claims 2, 9, and 22 which depend from claims 1, 8, and 21 respectively, and so have not sustained their burden of showing that the Examiner erred in rejecting claims 4, 11, and 24 under 35 U.S.C. § 103(a) as unpatentable over McKnight, Burnett, and Shuster for the same reasons we found as to claims 1, 8, and 21, *supra*.

CONCLUSION OF LAW

We conclude that Appellants have not shown that the Examiner erred in finding that McKnight discloses the limitation ". . . distributing through said broker via the Web to said client computer station, a process permitting said computer power service broker to access the computer power of said client station," as recited in claims 1, 8, and 21.

DECISION

The decision of the Examiner to reject claims 1-5, 8-12, and 21-25 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

ack

cc:

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